IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 108 of 2005
In
OFFICIAL LIQUDATOR REPORT No. 56 of 2004
In
COMPANY APPLICATION No. 127 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STERLING LAM LIMITED - Applicant(s)

Versus

O.L. OF WOOD POLYMERS LTD. & 6 - Respondent(s)

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Appearance :

Shri A L. SHAH, learned Counsel for MS. NIYATI K SHAH for Applicant(s) : 1,MR.D K.PUJ for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,6 - 7.
MRS SWATI SOPARKAR for Respondent(s) : 3,
MS BALA R THACKER for Respondent(s) : 4,
MR YF MEHTA for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 07/11/2006

ORAL JUDGMENT

1. The applicant has taken out Judges Summons with following prayers.

(A) Your Lordship be pleased to direct the Official Liquidator to allow the Applicant to remove Sheds as well as lift sold to the Applicant while confirming the sale in favour of the Applicant by Order dated 14/10/04, where by all movables except land, building and records were sold to the Applicant.

(B) Your Lordships be further pleased to direct the Official Liquidator to proceed with the sale of building and superstructure as without demolishing the building, it is not possible to take out plant and machinery sold to the Applicant.

(C) Alternatively, your Lordships be pleased to grant further time of Six months for removal of Plant and machinery so as to enable the Applicant to dismantle and remove the same causing least damage to the building and superstructure.

(D) Your Lordships be pleased to pass such

other and further orders as may be deemed just and proper in the interest of justice.

2. That in support of the Judges Summons', affidavit is filed by one of the Director of the applicant company that the sale came to be confirmed in favour of the applicant by an order dated 14.10.2004 in Company Petition No.149 of 1996, in view of the highest offer of Rs.178 lacs made by the applicant and all movable assets, excluding land and building were to be removed by the applicant. That vide above order dated 14.10.2004, following conditions were imposed.

> “ 7 The bid opened at offer of Rs.72 lacs by M/s. Lakhani Traders and ultimately wert upto 178 lacs which was the highest bid made by M/s. Sterling Lam Ltd. Accordingly, M/s. Sterling Lam Ltd. has emerged as highest successful bidder and the sale of the properties of the Company in liquidation being all movable assets excluding land, building, (Time Keeper's Office) and Records is

confirmed for a sum of Rs.178 lacs in favour of M/s. Sterling Lam Ltd. subject to the following terms and conditions. The sale shall be on the same terms and conditions as declared along with the tenders with further addition/modification in the conditions as follows and wherever there is any conflict between the two the terms and conditions stated hereinafter shall prevail.

(i) The sale is on “AS IS WHERE IS and WHATEVER THERE IS BASIS”

(ii) .....

(iii) .....

(iv) .....

(v) .....

(vi) .....

(vii) .....

(iix) ....

(ix) ....

(x) ....

(xi) The purchaser shall remove the Plant & Machinery and the debris of the building structure and shed within a period of 06(six) months from the date of possession being handed over by the Official Liquidator;

(xii) ......

8. ......

> **9.** In the result, the sale of all the assets, other than land, Time Keeper's Office, and Records of the Company in liquidation is confirmed for a sum of Rs.178 lacs in favour of M/s.Sterling Lam Ltd.”

3. Since the applicant was not in a position to remove plant, machineries and other movables as ordered, he has filed this application to grant further time of six months for removal of movables.

4. This Court, initially directed the applicant to join the secured creditors as party respondents and initially except Bank of Baroda, no other secured creditors appeared and by an order dated 20.04.2005, time limit was extended by this Court came to be extended upto 12.05.2005, which was again extended by an order dated 12.05.2005, upto 24th June, 2005 and on 29th June, 2005, it is recorded by the learned Company Judge that learned advocate appearing for the applicant

did not want any extension and therefore extension was not given.

5. That the Official Liquidator attached to this Court has filed his report and submitted that the claim of the applicant over shed and lift is incorrect and false, since the above two items were never sold to the applicant, and therefore prayer (a) of the application, deserves to be rejected. It is further stated that the lift is a passenger lift in an administrative building and not for carrying goods for the factory so as to forming part of the plant and machinery. It is an alternate to the staircase in the office/administrative building of the company and the lift cannot be said a movable assets, and therefore, the claim is to be rejected qua the lift.

6. It is also stated that the applicant is taking undue advantage of clause (xi) of Para-7 of the order dated 14.10.2004 by

which the applicant was not in fact sold shed over the plant and machinery, since only movables articles were sold. With regard to other prayers about directing the Official Liquidator to sale the land of the company in liquidation and to give appropriate direction to sale committee, it is stated that the offers are already invited by issuing public advertisement and appropriate action is being taken.

The Official Liquidator has also opposed the contention of the applicant that plant and machinery sold to the applicant cannot be removed without dismantling the building and it is stated that the applicant has purchased the plant and machineries after physical verification of the same and in fact the applicant is removing the machineries and purchase is on the “ As is where is and whatever there is basis” and therefore no further modification can be made by this Court. In support of the above

reasoning the Official Liquidator has also relied upon opposition of one Mr.Pranlal Bhogilal, a secured creditor opposing the prayer of the applicant.

7. In an affidavit-in-rejoinder filed by the applicant, it is stated that the applicant has reiterated that since all movable properties were sold to him, it also included lift being a movable object and a shed is always a part of plant and machinery covering the same is movable and the applicant is entitled to have possession of both the lift and the shed.

The applicant has also raised issue about certain letters produced by the Official Liquidator bearing dated 11.04.2005 and some additions made in the letter dated 11.04.2005 written by Shri Pranlal Bhogilal and the allegations made therein are denied.

8. That perusal of the record also reveal an

affidavit-in-reply filed by respondent no.3, a member of Sale Committee and the secured creditor, as an assignee of the secured debt of the company which was assigned by I.C.I.C.I. Accordingly, confirmation of sale of the movables vide order dated 14.10.2005 passed in O.L.R.No.56 of 2004 was excluding land, building and records of the company and some errors were crept in clause-(xi) of Clause-7/Para-7 of the order, which included shed alongwith removal of plant and machinery and debris of the building, superstructure within a period of six months from the date of possession being handed over by the Official Liquidator. It is therefore stated that intent of the above clause was for removal of the plant and machineries and not the debris of the building superstructure and the shed.

It is stated that even removal of lift as a part of movable assets, as claimed by the applicant, is not proper and the same is

misconceived. That the above affidavit filed by the secured creditor also mentions about unauthorized connection of electricity and water supply and illegal use of the administrative office, guest-house and other buildings by the applicant, without obtaining prior permission of the Company Court and area of premises illegally occupied by the applicant is more than 10,000 sq mtr. It is also stated that purchaser-applicant must be directed to repair and construct the property so as to bring it to original possession and to pay a suitable compensation for unauthorized use and damages caused to the aforesaid properties of company in liquidation.

9. Considering the above aspects, it is stated that sufficient time was given by the learned Company Judge in the order dated 14.10.2004 and no further time requires to be granted as prayed for.

10. In a rejoinder filed by the applicant to the above affidavit of secured creditor Shri Pranlal Bhogilal, he has reiterated what is stated in the Judges Summons filed by the applicant and denied the allegations levelled against the applicant about occupation of the premises illegally or causing any damage to the building or any other property of the company (in liquidation).

11. According to the applicant, while adjourning the matter, this Court has granted extension from time to time and throughout the period, the applicant was vigilant and matter has not been adjourned on any date on account of any fault on the part of the applicant.

12. That perusal of the record also indicate that Review Application being Misc. Civil Application No.60 of 2005 came to be filed in O.L.R. No.56 of 2004 by Shri Pranlal

Boghilal, one of the secured creditors with a prayer to rectify and/or modify the order dated 14.10.2004, by deleting the words " and the debris of the building superstructure and shed" from clause-(xi) of Para-7 of the order and also by adding the word "building" after the word 'other than land', to para-9 of the order.

Upon hearing the learned advocate appearing for the parties and in view of no objection by learned advocate appearing for the purchaser, the learned Company Judge partly modified Para-9 of the order dated 14.10.2004 and the word "building" was added and modified that:-

" In the result, the sale of all the assets, other than land, time keepers office, **building,** and records of the company in liquidation is confirmed for a sum of Rs.178 lacs in favour of M/s. Sterling Land Ltd."

Thus, the word "building" came to be

included in Para-9 of the order dated 14.10.2004.

Sofar as prayer with regard to deletion of word 'Shed' from clause-(xi) of Para-7 of the order dated 14.10.2004 is concerned, it was objected by the purchaser and in view of pendency of this Company Application No.108 of 2005, no modification was made and other prayers came to be rejected in view of pendency of the petition.

Thus, with regard to two prayers in Para-9 (a) and (b) of the Review Application, the learned Company Judge thought it fit to grant prayer 9(b) only and in view of pendency of this application i.e. Company Application No.108 of 2005, other prayers came to be rejected and not accepted.

13. Thus, contentions have been raised by the learned counsel appearing for the applicant on the basis of pleadings made in

Company Applications and reply and rejoinder filed by respective parties and also the report filed by the Official Liquidator from time to time.

14. Shri A.L.Shah, learned counsel appearing for the applicant has mainly contended that lift installed in the administrative building/office of the company in liquidation is a movable property and since all movable properties are sold to the applicant, possession of the lift be handed over to the applicant by the Official Liquidator as per the order dated 14.10.2004. Secondly, the learned counsel Shri A.L.Shah appearing for the applicant further submitted that in view of clear mentioning about " debris of the building and shed" in clause-(xi) of Para-7 of the order dated 14.10.2004, the shed which is over the plant and machinery and the same being movable the applicant is entitled to get possession of the shed and prayer to the

above extent also requires to be granted by this Court. Thirdly, learned counsel for the applicant has further submitted that unless directions to the Official Liquidator are given for proceedings further for the sale of building and superstructure, it has become impossible for the applicant to remove plant and machineries sold to the applicant, without damaging the building. Thus, further time of six months for removal of plant and machineries is necessary so as to enable the applicant to dismantle and remove the same without causing any damage to the building and the superstructure.

Shri A.L.Shah, learned counsel for the applicant relied on the order passed by this Court by which initially time limit was extended, which was subsequently not extended, at the request of learned advocate appearing for the applicant and it is recorded in the order dated 29.06.2005.

It is also submitted that request made by respondent no.3 with regard to the claim of damages and compensation to be paid by the applicant to the Official Liquidator, in absence of a proper application, no order be passed by this Court in this regard.

15. The Official Liquidator attached to this Court has relied on reports filed by him from time to time to oppose the prayers and submitted that the movables in the form of plant and machineries have been purchased by the applicant with an open eye and after physical verification and also on the condition " as is where is and whatever there is basis", lift and shed are not movables and therefore, no prayer as prayed for by the applicant be granted by this Court.

16. Mrs. Swati Soparkar, learned advocate appearing for Shri Pranlal Bhogilal, one of the secured creditors and member of Sale

Committee, respondent no.3 vehemently contended that prayers of the applicant to grant possession of the lift and shed are misconceived, since lift and shed cannot be said to be movables and even order dated 14.10.2004 confirming the sale do not indicate in any of the two items to the applicant. She has further submitted that proper amount towards damages to the property caused by the applicant be awarded by this Court in view of illegal usage of the property of the company in liquidation by the applicant and causing damage through the building, while removing the plant and machineries.

She has further relied on definition of lift as discussed in **1989 (42) ELT T.23** and submitted that installed lift is immovable property.

Smt.Soparkar, learned advocate for respondent no.3 therefore contended that no

extension of period of six months be granted in view of reports filed by the Official Liquidator and also about specific terms and conditions of clause:-(xi) of Para-7 and modified Para-9 of the order dated 14.10.2004.

Besides, according to Smt. Soparkar, learned advocate appearing for respondent no.3, conduct of the applicant itself do not justify any extension, since damage is caused to the properties of the company in liquidation is in defiance of the terms and conditions of the order confirming the sale dated 14.10.2004 and probable damages and compensation be awarded for the same.

17. Having heard the learned counsel appearing for the parties, on perusal of the records and pleadings, affidavit-in-replies and rejoinder filed by the respective parties and reports filed by the Official Liquidator filed by him from time to time, I

am of the opinion that in the application filed by the applicant for grant of extension of time, no adjudication be made about award of damages and compensation on the basis of averments made in reply or the reports filed by the Official Liquidator. There is no application filed by the Official Liquidator or by any secured creditor for initiating proper proceedings.

It is open for the concerned parties to take appropriate proceedings in this regard with specific pleadings and supporting materials, if available in accordance with law only. No relief can be granted against the applicant in his application filed for extension of time on various grounds.

18. Sofar as, claim of the applicant with regard to two items i.e. Lift and Shed are concerned, it is made clear by the learned Company Judge while reviewing the order in Misc.Civil Application No.60 of 2005 by an

order dated 11.08.2005 that no other prayers are granted in view of pendency of this application no.108 of 2005, except addition of word " building" in Para-9 of the order dated 14.10.2004. Thus, a prayer with regard to deletion the word 'shed' from Para-7 of the order dated 14.10.2004, was not accepted. The order dated 14.10.2004 is to be read in its correct perspective and as a whole and not in truncated manner. The applicant was sold only movables articles which included plant and machineries and not any other items. That reading of Clause-(xi) of Para-7 and modified para-9 of the order dated 14.10.2004 makes it clear that the applicant-purchaser was entitled to remove the plant and machineries and the debris of the building superstructure and shed within a period of six months from the date of possession being handed over by the Official Liquidator. It is also pertinent to note that while modifying the order dated 14.10.2004 qua para-9, the learned Company

Judge has not accepted Prayer-9(a) of M.C.A.No.60 of 2005 and deletion of word “shed” was not ordered, will go to show that purchaser is entitled to remove the plant and machineries and the debris of the building superstructure and shed, except the above, no other item can be permitted to be removed by the purchaser. So far as lift is concerned, it is situated in the administrative building and was used as an alternate to the staircase, cannot be said to be a movable and no where it transpires that the said lift was carrying any goods etc and claim of the applicant to the above extent is misconceived and baseless. The purchase is on “as is where is and whatever there is” basis after the verification of the properties of the company in liquidation, the prayer of the applicant of possession of the lift cannot be granted.

19. Therefore, prayer (A) of the Judges Summons' of Company Application No.108 of

2005 qua the lift is not accepted and part of the above prayer qua shed stand accepted. Since, time has elapsed after movables were sold to the applicant, the Official Liquidator and the Sale Committee shall proceed further with sale of land and building after inviting the fresh bid in accordance with law.

20. The Official Liquidator is directed to handover possession of shed over plant and machineries as per Clause-(xi) of Para-7 of order dated 14.10.2004.

21. The time granted to the purchaser by way of extension by this Court from time to time upto 29th June, 2006 and in view of express statement made by learned advocate appearing for the applicant not to seek further extension, no further extension is granted. In case, if the plant and machineries are not removed as ordered on 14.10.2004 by the purchaser-applicant, after 29.06.2006, the

applicant shall pay Rs.25,000/- per month to the Official Liquidator from 01st July, 2006 till removal of such plant and machineries and in case if the above movables are not removed and the amount is not paid by the applicant, the Official Liquidator shall be entitled to take appropriate action and proceedings in accordance with law.

22. With the above directions and observations, this Company Application No.108 of 2005 is partly allowed. No order as to costs.

(ANANT S. DAVE, J.)

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